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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,811	11/02/2001	Aaron L. Strand	47097-01100	3820

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EXAMINER

CHOI, STEPHEN

ART UNIT PAPER NUMBER

3724

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/002,811

Applicant(s)

STRAND, AARON L.

Examiner

Stephen Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 14-16, 20, 26 and 31-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-13, 17-19, 21-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 & 6. 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, Species A in Paper No. 8 is acknowledged. Applicant indicated that claims 10-19, 21-25, and 27-31 are associated with Species A. The examiner respectfully disagrees. Claims 14-16 and 31 do not read on the elected Species A.
2. The examiner respectfully requests to clarify the status of claims 1-9 and 33-40. Page 12 of applicant's reply is unclear as to whether claims 1-9 and 33-40 are cancelled or withdrawn.

### ***Specification***

3. The abstract of the disclosure is objected to because of legal phraseology. Correction is required. See MPEP § 608.01(b).
4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

5. Claims 11-12 are objected to because of the following informalities: claims 11-12 recite a method of using the claimed apparatus which is improper in an apparatus claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 17-19, 22 and 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17-19 are indefinite in that it is not clear if it is directed to a zipper having a guide notch or a punching apparatus. While the preamble states the punching apparatus, the body of the claim merely sets forth the guide notch.

In claim 19, "said fins" lacks positive antecedent basis.

In claim 22, it is not clear what structure is set forth by "said punch is within approximately 0.00004 inches of said housing".

In claim 29, "said first track" lacks positive antecedent basis.

In claim 30, "said second zipper slot" lacks positive antecedent basis.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 10-13, 17-19, 24-25, 28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Fitz, jr. (US 5,417,134).

Fitz discloses all the recited elements of the invention including:

- a) a housing (2) having a first slot, a second slot, and an open region (at 42);
- b) a punch (3);
- c) a guide having a stepped edge (16, 16a, Figure 4).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 21-23, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz, Jr. (US 5,417,134).

Regarding claims 21 and 27, Fitz discloses the invention substantially as claimed except for the guide having a width approximately 15 to 30 % less than the width of the punch or the guide slot having a width approximately 15 to 30 % less than the width of the punch. It would have been an obvious matter of design choice to select the width of guide or guide slot to be approximately 15 to 30 % less than the width of the punch, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of

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ordinary skill in the art. Regarding claim 22, as best understood, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the punch within approximately 0.00004 inches of said housing, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Regarding claims 23 and 29, it would have been an obvious matter of design choice to make the different portions of the slots of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Furthermore, it would have been an obvious matter of design choice to select the size of slots to accommodate tracks, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mainardi et al., Yoshieda et al., Nielson, Oide, May, and Strand et al. are cited to show related devices.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Choi whose telephone number is 703-306-4523. The examiner can normally be reached on Monday thru Friday between 9am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-

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9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

SC  
November 7, 2003

  
**STEPHEN CHOI**  
**PRIMARY EXAMINER**